

Waste Evaluation and Enforcement Branch Staff Report

Summary of the City of Oakdale's Compliance Review and Consideration of the Issuance of Compliance Order CO #017-004

SUMMARY

The Department of Resources Recycling and Recovery (Department) conducted a review of the City of Oakdale's (City) implementation of, and compliance with, California's Recycling of Commercial Solid Waste Law, referred to as the Mandatory Commercial Recycling (MCR) law (California Public Resources Code (PRC) sections 42649-42649.7 and California Code of Regulations (CCR) sections 18835-18839). PRC section 42649.3 requires the Department to review whether a jurisdiction has complied with, or made a good faith effort to comply with, the requirements of the MCR law. For purposes of this evaluation, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its MCR program. The evaluation of good faith includes, but is not limited to, the factors found in PRC section 42649.3 (i)((1)-(7)).

Based on the Jurisdiction Compliance Unit (JCU) staff's observations, the following key deficiencies, as well as other details described in the report demonstrate the City has not made a good faith effort to comply with the requirements of the MCR law.

- The City did not implement a commercial solid waste recycling program that was designed to divert commercial solid waste from businesses within the City which are subject to PRC section 42649.2 and CCR section 18837.
- The City did not provide documentation supporting the efforts it has taken to notify businesses and multi-family complexes of noncompliance with the MCR law (PRC section 42649 (i)(4) and CCR section 18838 (a)(2)).
- The City's Annual Reports for 2012, 2013, 2014, and 2015, submitted on or before the August due date, were incomplete regarding implementation of the requirements of the MCR law (PRC section 42649.3 (g) and CCR section 18838 (h)). Follow-up by Local Assistance and Market Development (LAMD) and JCU staff did result in some additional information, however, reporting was still incomplete and did not provide details to support that the City made all reasonable and feasible efforts to implement the following components of their program:
 - Identification
 - Monitoring
 - Education and Outreach

Based on JCU staff's review and analysis, JCU staff recommends that a Compliance Order (CO) be issued. As part of the CO, the City would be directed to develop a Local Implementation Plan (LIP). The LIP will identify a strategy for program enhancements, and local actions necessary to enable the City to meet the requirements of the MCR law.

JURISDICTION COMPLIANCE HISTORY

The City does not have any prior CO's, nor has it filed for extensions to improve diversion programs to meet the diversion requirement of PRC 41780.

Based on historical records and previous findings, the City was included in the four-year Jurisdiction Review cycle.

BACKGROUND

Statutory Requirements for Department Review and Enforcement Action

PRC section 42649.3 requires that on and after July 1, 2012, each jurisdiction shall implement a commercial solid waste recycling program appropriate for that jurisdiction designed to divert commercial solid waste from businesses subject to PRC section 42649.2, whether or not the jurisdiction has met the requirements of PRC section 41780. Each jurisdiction is also required to report the progress achieved in implementing the MCR law, including identification, monitoring, education, outreach, and if applicable, enforcement efforts, by providing updates in the Annual Report required by PRC section 41821.

PRC section 42649.3 requires the Department to review whether a jurisdiction has complied with, or made a good faith effort to comply with, the requirements of the MCR law. For purposes of this evaluation, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its commercial recycling program in accordance with the MCR law (PRC section 42649.3 (i)).

Pursuant to PRC section 42649.3 (g), the Department is to review a jurisdiction's compliance with the MCR law as part of the Jurisdiction Review required by PRC section 41825. The Department may also evaluate whether a jurisdiction is in compliance at any time that the Department receives information that the jurisdiction has not implemented, or is not making a good faith effort to implement its commercial recycling program (PRC section 42649.3 (h)).

In determining whether the jurisdiction has made a good faith effort to comply with the requirements of the MCR law, the Department's evaluation may include, but is not limited to, the following factors:

- The extent to which businesses have arranged for recycling services in compliance with PRC Section 42649.2, including information on the amount of disposal that is being diverted from the businesses, if available, and on the number of businesses that are subscribing to recycling services;
- The recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses;
- The extent to which the jurisdiction is conducting education and outreach to businesses;
- The extent to which the jurisdiction is monitoring businesses, and notifying those businesses that are out of compliance;
- The availability of markets for collected recyclables;
- Budgetary constraints; and
- For rural jurisdictions, the effects of small geographic size, low population density or distance to markets.

The Department is also required to consider the enforcement criteria included in its enforcement policy that was amended and approved in June 2015 (PRC section 41825 (e)(3)).

If the Department determines that the jurisdiction did not comply with, or make a good faith effort to comply with the MCR law, the Department may issue a Compliance Order.

Prior to issuing a notice of intent to issue a Compliance Order, PRC section 41825 (c)(1) requires the Department to confer with the jurisdiction for at least 60 days regarding conditions relating to the proposed order of compliance.

If, after conferring with the jurisdiction, the Department makes a determination that a compliance order should be issued, PRC section 41825 (c)(2) requires the Department to issue a notice of intent to issue a Compliance Order not less than 30 days prior to conducting the hearing to consider issuing the Compliance Order. At any time prior to the hearing, at the hearing, or after the hearing the Department may decide not to commence compliance action if it finds that the jurisdiction has made a good faith effort to implement the MCR law.

Fines of up to \$10,000 per day may be imposed if the provisions of the Compliance Order and schedule are not met by the jurisdiction (PRC section 41850).

The Department's Review Process

LAMD staff's 2012-2015 review determined that the City had gaps in its MCR implementation. Based on this determination, LAMD referred the jurisdiction to JCU for an independent Jurisdictional Review. On March 24, 2017, LAMD notified the City that an independent review of the City's MCR implementation was necessary (Attachment 1). On March 30, 2017, JCU staff initiated the 60-day conferring process required by PRC Section 41825 (Attachment 2).

JCU conducted an independent jurisdictional review, which extensively reviews and analyzes data and documentation to understand a jurisdiction's MCR implementation efforts. The review included, but was not limited to:

- Communications with the jurisdiction (phone calls, emails, and letters) to learn about the community and the MCR program offered.
- Requesting approval from the jurisdiction to communicate with any of the hauler(s) (whether under contract or not) on behalf of the jurisdiction to obtain records related to, but not limited to, the total number of accounts serviced, and the total tons of collected recyclables and waste from the jurisdiction.
- Commercial cart and bin field evaluations.
- Observing and evaluating a jurisdiction's recycling and waste loads at their haulers transfer station.
- Tracking efforts to amend or award franchise agreements or other contracts that can have an impact on a jurisdiction's implementation of the MCR program.

In March 2017, JCU began its independent review of the City's MCR program implementation, using available information from the City's Annual Reports, Department databases, and communications between the Department and the City. This review focused on the commercial waste generators (as defined by PRC 42649.1 (c)) and multi-family residential complexes of five

units or more and included visits with City staff, the City's hauler, City's facilities, and a Material Recovery Facility.

ANALYSIS

Overview of Jurisdiction Demographics and Infrastructure

Existing Jurisdiction Conditions

The City is located in San Joaquin County. According to the 2010 U.S. Census Bureau, the City encompasses approximately 6.06 square miles. The City has a population of 20,675 (Department of Finance, 2015). According to the jurisdiction's base year history (dated 1990), 41.6 percent percent of the City's total waste generation is from the non-residential waste stream.

Summary of City's Solid Waste Infrastructure and Materials Flow

The City has a contract with Gilton Solid Waste Management Inc. (Gilton) to provide its waste and recycling services. Per Gilton's contract with the City (sec. 27) no less than 50% of the City's waste goes the Fink Road Landfill or the Covanta Waste-to-Energy facility in Stanislaus County. Recycling bins are provided to businesses that sign up for recycling services. Gilton provides the City with its list of business customers and service levels. Commercial recycling and waste are taken to the Gilton Solid Waste Management Transfer Station located in Modesto for processing. Source separated loads of Recyclables undergo processing. Waste loads are loaded into transfer trailers and hauled to the Fink Road Landfill in Crows Landing for disposal.

Findings and Observations of the Jurisdiction's Mandatory Commercial Recycling Program

Below is a detailed analysis of the City's program, and the City's efforts to implement the program, the law and reporting requirements. The analysis includes the program deficiencies, which lead to the determination of good faith effort or lack thereof.

Commercial businesses that generate four (4) cubic yards or more of waste per week, and multi-family complexes of five (5) or more units must comply with the MCR law. Described below are staff's findings of what was found at both commercial businesses, multi-family complexes, and at the solid waste and recycling facilities accepting the materials produced by the jurisdiction. Since multi-family complexes are serviced on the same routes as businesses, the solid waste and recycling facilities analysis reflects what is happening with the MCR waste stream as a whole. JCU staff's field visit photo report (Attachment 3) contains visual documentation of many of the observations detailed below.

Commercial Business Diversion

About the Program and Efforts:

On-Site Collection: Participation in the City's commercial recycling program is voluntary. The City's permitted hauler offers recycling services. Service frequency and bin size varies depending on an account's service needs. Materials accepted for recycling include paper, cardboard, glass, plastic, metals, bottles, and cans.

Self-Haul - Businesses are allowed to donate or self-haul their recyclables to comply with the MCR law. The City does not identify or monitor businesses that donate or self-haul their recyclables.

Recent Efforts by the City: The City has not notified JCU staff of any changes to its program. However, the City has considered improving the information obtained from its hauler to help monitor businesses that are not recycling. The City also stated they might consider an MCR ordinance, which could include citation criteria.

Facts and Observations Related to On-Site Commercial Business Recycling Efforts:

- JCU staff analyzed the City's Bin Customer List to determine the number of businesses subject to MCR. JCU's analysis determined that the City has 190 commercial solid waste collection accounts that meet the MCR definition of a business and are required to recycle under the MCR law. Out of the 190 accounts that are required to recycle, 44 accounts are subscribed to recycling services. This is a participation rate of 23.2 percent.
- JCU staff visited ten (10) businesses, five (5) shopping complexes and the Oakdale Community Center subject to MCR around the City. JCU staff found that there was six (6) cardboard only recycle bins and 36 waste bins located at the sites visited. JCU staff found more than 60% percent contamination in the cardboard only recycling bin observed.
- Staff observed five (5) businesses setting out materials that included bailed cardboard, wood pallets, and other recyclables. The City was not able to provide information on total number of businesses that back-haul. Without this information, JCU staff was unable to determine whether back hauling is an effective part of the City's MCR program.
- JCU staff interviewed various representatives at six (6) businesses, and at each site the interviewed employee responded that they had not been provided with any communication from the City on the subject of MCR. All sites were questioned about their waste disposal and recycling practices of their non-hazardous waste materials.
 - Business one (1) backhauled their cardboard, batteries and plastic bags. Additionally they had a cardboard recycling bin.
 - Business two (2) self-hauled cardboard to a recycling center in Modesto.
 - Business three (3) used a contracting service to recycle their cardboard.
 - Business four (4) backhauled cardboard, film plastic, and other recyclables.
 - Business five (5) used a contracting service to recycle their cardboard.
 - Business six (6) had no recycling systems and disposed of all materials in their waste bin.

Facts and Observations Related to On-Site Commercial Business Waste Collection:

- JCU staff observed three (3) to six (6) cubic yard waste bins at different businesses subject to MCR throughout the City. Staff observed on average 20 percent recyclables in waste bins when recycling bins were present. When recycling bins were not present, staff observed on average 75 percent recyclables in the waste bins, most of which was cardboard.

Multi-Family Complex Diversion

About the Program and Efforts:

On-Site Collection- Participation in the City's multi-family complex recycling program is voluntary. The City's permitted hauler offers recycling services. Service frequency and

bin size varies depending on an account's service needs. Materials accepted for recycling include paper, cardboard, glass, plastic, metals, bottles, and cans.

Self-Haul - Multi-family complexes are allowed to donate or self-haul their recyclables to comply with the MCR law. The City does not identify or monitor multi-family complexes that donate or self-haul their recyclables.

Recent Efforts by the City: The City has not notified JCU staff of any changes to its program. However, the City has considered improving the information obtained from its hauler to help monitor multi-family complexes that are not recycling. The City also stated that it might consider an MCR ordinance, which could include citation criteria.

Facts and Observations Related to On-Site Multi-Family Complex Recycling Efforts:

- JCU staff analyzed the Oakdale Bin Customer List provided by the City to determine the number of multi-family complexes subject to MCR. JCU's analysis determined that the City has 14 multi-family complexes that meet the MCR definition of a multi-family complex and are required to recycle under the MCR law. The data provided did not identify any accounts that are recycling. This is a participation rate of zero (0) percent.
- During JCU staff's field visit to the City, three (3) multi-family complexes subject to MCR were inspected. JCU staff found zero (0) recycling bins and ten (10) waste bins located at the sites visited.
- JCU staff interviewed representatives of two multi-family complexes. At both sites personnel responded that they had received no communication from the City on the subject of MCR and that all recyclables being generated at the apartment were being deposited in the sites waste bins. At one site JCU staff was told that renters were allowed one (1) personal bin on their apartment patio for the recycling of bottles, cans and plastic bottles for the renter to redeem at a site of their choosing. All three (3) sites visited conveyed interest in recycling services.

Facts and Observations Related to On-Site Multi-Family Complex Waste Collection:

JCU staff observed four (4) cubic yard waste bins at the three multi-family complexes visited. Staff observed on average 25 percent recyclables in these waste bins, most of which was cardboard and paper.

Jurisdiction Compliance with the Notification Requirement of Noncompliant Commercial Businesses and Multi-Family Complexes

As outlined in PRC section 42649.3 (d), a jurisdiction's solid waste recycling program shall include education, outreach to, and monitoring of, businesses. A jurisdiction is also required to notify those businesses and multi-family complexes that are not in compliance with PRC section 42649.2. Below outlines the City's efforts to comply with the notification aspect of the MCR law.

Facts and Observations:

- Staff was unable to verify, nor did the City provide any documentation regarding efforts made in 2012, 2013, 2014, or 2015 to support implementation of this requirement.

- When JCU staff inquired what the City's efforts were in notifying businesses and multi-family complexes, the City replied that the City does not make a determination of non-compliance and does not notify businesses that are out of compliance.

Solid Waste and Recycling Facility Facts and Observations:

Commercial businesses and multi-family complexes are not serviced through separate routes, in other words one truck picks up from both locations commingling the materials. This makes it difficult for JCU staff to discern the source of specific materials/contamination within the loads observed at the facility(s).

- Staff visited the Gilton Resource Recovery and Transfer Facility in Modesto. Staff found that waste loads do not undergo mixed waste processing before being transferred to the designated disposal facility. Gilton informed JCU staff that commingled recycling loads undergo material recovery but at the time of staff's visit, this activity was not observed. JCU staff inquired with the Department's field inspection staff regarding observations they have made of the facilities operations. JCU staff learned that the field inspector has seen the sort line running, however, only to separate cardboard.
- In June of 2016, Gilton Solid Waste Inc. provided the City with a summary of a 2016 waste analysis conducted on the commercial/industrial waste stream. This summary reported a recovery rate of 43% percent for the City of Oakdale's commercial/industrial waste sent to its transfer station. The summary covers the first half of 2016 and is for all commercial waste. The report does not specify between businesses subject to MCR and those that fall below the statutory threshold. However, the report does provide the tonnages of materials diverted, including 3,037.67 tons of green waste and 3,867.18 tons of feed. These top two categories combined account for 37.9 percent of the reported recovery rate with the remaining 5.1 percent representing all other recyclables (paper fiber, metals, plastics, and glass). These two categories do not appear to represent the recyclables generated by the businesses that are not participating in the City's commercial recycling program.

Conclusions:

The participation rate for the City was determined to be 23.2 percent of businesses and zero (0) percent of multi-family complexes subject to MCR. JCU staff, through field observations identified four (4) businesses that prepared recyclables for pick-up that were not known to the City. These additional four (4) businesses increase the participate rate to 25.3 percent for businesses, no additional efforts by multi-family complexes were found during staff's field visit, therefor, the participation rate remains zero (0) percent. Furthermore, the City did not notify all noncompliant businesses for years 2012-2015, and the City has stated it is not making determinations of non-compliance. Based on staff's field visit to the City and the data collected and discussed above, the City has not demonstrated that it has made all reasonable and feasible efforts to implement a program designed to recycle commercial waste from businesses or from multi-family complexes subject to the MCR law.

Jurisdiction Compliance with the Annual Reporting Requirement

Pursuant to PRC section 42649.3 (g) and CCR section 18838 (h) each jurisdiction is required to report the progress achieved in implementing the MCR law, including identification, monitoring, education, outreach, and if applicable, enforcement efforts. PRC section 42649.3 (g) requires the jurisdiction to include its progress in the Annual Report required by PRC section 41821. Below is a detailed analysis of the City's reporting efforts and includes reporting deficiencies which lead to the Department's determination of good faith effort or lack thereof.

Summary: JCU conducted an analysis of the City's 2012, 2013, 2014, and 2015 Annual Reports and prepared a chart of its findings regarding the information reported in the City's Annual Reports for the years covered by this review. The 2016 Annual Report is currently under review by LAMD and was not considered in this staff report.

	Review Period				Additional Data
	2012	2013	2014	2015	2017**
MCR Businesses	Not Reported	Not Reported	185	189	190
MCR Businesses Recycling	Not Reported	Not Reported	Not Reported	35	44
MCR Businesses Not Recycling	Not Reported	Not Reported	Not Reported	154	146
MCR Multi-family	Not Reported	Not Reported	19	19	19
MCR Multi-Family Recycling	Not Reported	Not Reported	Not Reported	0	Not Reported
MCR Multi-Family Not Recycling	Not Reported	Not Reported	Not Reported	19	Not Reported

***2017 data reflects the data provided by the City in response to JCU's inquiry and includes the additional data collected through staff's field observations.*

- **Identification**

A jurisdiction is required to identify businesses that dispose of four (4) or more cubic yards of commercial solid waste per week and multi-family residential complexes of five (5) units or more (CCR section 18838 (a)(2)). The jurisdiction must report its progress in identifying these businesses in its Annual Report. As indicated by the above chart:

- In 2012-2013, the City did not report through the electronic annual report (EAR) any commercial businesses or multi-family complexes as being subject to the MCR law.
- In 2014 and 2015 the City identified the total number of commercial businesses and multi-family complexes subject to the MCR law, however, in 2014, the City did not report the total number of businesses and multi-family complexes that were, or were not recycling. No additional identification data was reported regarding the number of businesses and multi-family complexes recycling to either LAMD, during their yearly review of the submitted EAR, nor to JCU as part of this analysis.
- As part of JCU's request for data on the jurisdiction's 2017 MCR program efforts, the City provided documentation from Gilton. Through staff's analysis, service levels for businesses waste and recycling services were calculated; however, staff was only able to determine waste services for businesses and multi-family complexes within the

City. Staff was not able to identify any recycling services being provided to multi-family complexes.

- During JCU staff's site visit, four (4) businesses were observed preparing recyclables for back hauling, and one (1) business representative talked to said they self-haul recyclables. The City was not able to provide data on the total number of businesses that back-haul or self-haul recyclables. Without this information, JCU staff is unable to determine whether this activity is an effective part of the City's MCR program.

- **Monitoring**

A jurisdiction is also required to monitor businesses and multi-family complexes subject to the MCR law to determine whether they are recycling (CCR section 18838 (a)(2)) and report on those efforts in the Annual Report.

- In 2012-2015, the City did not report on its progress on the monitoring of all businesses and multi-family complexes subject to MCR in the Annual Reports. Furthermore, a review of supplemental information provided to the Department following the annual submittal of the EAR was void of information regarding any monitoring efforts by the City
- In 2017, when JCU staff inquired on monitoring, the City reported that the hauler "looks at customers who have 4 cubic yards or more of trash". The City is not receiving reports from the hauler regarding these efforts. As was discussed earlier regarding the City's notification efforts, the City is not undertaking efforts to monitor businesses or multi-family complexes regarding participation in the City's commercial recycling program.

- **Education and Outreach**

About the Efforts:

For the reporting period of 2012-2015, the City reported on print education and outreach efforts. Within the response to JCU staff's 2017 inquiry, the City stated that print, direct contact, and online education and outreach are provided.

Facts and Observations:

The following was reported within the Annual Reports:

- In 2012 and 2013, Annual Reports contained no information regarding the City's education and outreach efforts. No additional information was provided by the City regarding education and outreach to LAMD during their yearly review of the submitted EAR.
- For 2014 and 2015, the City lists a number of ways that it uses to educate and provide outreach to the commercial businesses and multi-family complexes. In 2014, the City reported that it has MCR information on its website under Finance Department for new business customers and those that are renewing their annual licenses. In November of 2017, JCU checked the website and was unable to find MCR recycling information on that page. The City also reported that there is MCR information in one monthly utility bill each year. The City of Oakdale reported it uses Facebook and has updated its website to provide MCR information. In November of 2017, staff searched for City of Oakdale posts of

MCR information on Facebook, however staff was unable find and verify any posts.

- In 2015, the City reports that it provided businesses with separate bins for recycling opportunities and the bins are labeled as such to collect specific items, and that education and outreach is to encourage customers to wait for special recycling days each quarter to collect and drop off items at the Corporation yard free of charge. JCU staff inquired about these efforts and found out from the City that these statements were not accurate and did not occur in the City.
 - The City's website in the Public Services Department section contains a notice about the State's recycling requirements for businesses and multi-family complexes; however, specific information about the City's MCR program and how to participate are not provided. The website also contains links to www.calrecycle.ca.gov and www.calrecycle.ca.gov/business/ for the user to obtain additional information, though neither of these webpages provide information regarding MCR.
 - The City provides flyers, inserts, billing notices and information on its website (as mentioned above). Flyers are available at City hall and obtained when a new business receives its licensing packet. However, flyers obtained by JCU staff at City hall during its site visit did not contain information on the MCR law.
 - In 2017, the City informed JCU that it relies on Gilton to provide a message to customers on the MCR law. The City provided a copy of Gilton's December 2016 invoice which included the following information on the MCR law: "If you own and/or operate a business or have rental properties in California, a new law may impact you. AB341 now requires businesses that produce 4 or more cubic yards of waste per week and multi-family residences (with five or more dwellings) to recycle, reuse and/or divert some of their waste from disposal." Staff was not able to determine the initial start date of this effort. Without this information, JCU staff is unable to determine whether this activity is an effective part of the City's MCR program.
- **Enforcement (Optional)**
The City did not indicate in its 2012, 2013, 2014, and 2015 Annual Reports that the City elected to include enforcement as part of their implementation of the MCR law. As part of JCU's 2017 inquiry, the City did not report any enforcement authority currently within the City's ordinances. Accordingly, JCU has not considered enforcement in its analysis.

Conclusions:

Based upon the facts and observations above, the City has not made all reasonable and feasible efforts to identify and monitor the businesses and multi-family complexes, and implement MCR education and outreach. The Annual Reports did not include complete information on an annual basis regarding the businesses and multi-family complexes that are subject to the MCR law. With regards to education and outreach, the City did not provide any education and outreach for 2012-2013. Since 2014 the City has reported on efforts made regarding education and outreach to the businesses and multi-family complexes that are subject to the MCR law. However, JCU staff could not verify many of these efforts, or found

that efforts lacked MCR and City specific information.

In addition to the observations and conclusions described above, the Department also evaluated the factors in PRC section 42649.3 (i)(1)-(7)¹. The following is a summary of staff's analysis of the factors, and the City's efforts:

PRC section 42649.3 (i)(1)-(7) Factor	Staff's Consideration	Staff's Finding
(1) Extent to which businesses have complied with PRC section 42649.2, including information on amount of disposal being diverted (if available) and the number of businesses that are subscribing to service.	For 2017, through data provided by the City JCU staff calculated a participation rate of 23 percent for businesses and zero (0) percent for multi-family complexes. Through JCU staff's field observations, 4 (four) additional businesses were found to be recycling which increased the City's participation rate for businesses to 25.3 percent. The multi-family complex participation rate remains zero (0) percent.	Does not demonstrate good faith effort.
(2) The recovery rate from the material recovery facilities that are utilized by the businesses.	The hauler reported to the City in their 2016 Waste Analysis Report a recovery rate of 43% percent, for 2016. However, the top two materials reported included green waste and feed, which combined account for 37.9 percent of the reported recovery rate. These two materials do not represent the materials generated and placed within the waste bins at the businesses and multi-family complexes staff observed.	Is not a consideration.
(3) The extent to which the jurisdiction is conducting education and outreach.	The City has not provided adequate documentation supporting its efforts to provide education and outreach to covered businesses.	Does not demonstrate good faith effort.

¹ In determining whether the City made a good faith effort to implement its selected commercial recycling program, the Department may consider, but is not limited to, the factors presented in PRC section 42649.3 (i)(1)-(7).)

(4) The extent to which the jurisdiction is monitoring businesses, and notifying those businesses that are out of compliance.	The City has not provided documentation supporting efforts taken to implement monitoring and notifying those businesses that are out of compliance. Furthermore, on May 17, 2017 the City stated they are not fulfilling this requirement.	Does not demonstrate good faith effort.
(5) The availability of markets for collected recyclables.	The City is located in a metropolitan area and is not limited by geography or infrastructure to markets any more than other jurisdictions in the State.	Is not a consideration.
(6) Budgetary constraints (Note: PRC section 42649.6 allows a jurisdiction to charge and collect a fee from a commercial waste generator in order to recover the jurisdiction's cost incurred in complying with MCR).	The City has not indicated that budgetary constraints were a factor in its failure to comply with the MCR law. The City reported it does have limited staffing.	Is not a consideration.
(7) In the case of a rural jurisdiction, the effects of small geographic size, low population density, or distance to markets	The City is not a rural community.	Is not a consideration.

Communications and Notification History

March 24, 2017, LAMD notified the City that an independent review of the City's waste management programs was necessary (Attachment 1).

March 30, 2017, JCU staff initiated the 60-day conferring process required by PRC Section 41825 (Attachment 2).

November 8, 2017, the Department mailed the 30-Day Notice of Intent to Issue the City of Oakdale a Compliance Order for Failure to Implement the Mandatory Commercial Recycling (MCR) law (Attachment 4).

Findings

Based on a review of the City's MCR program and reporting, JCU staff finds that the City has not demonstrated that it has made all reasonable and feasible efforts to comply with the requirements of the MCR law (PRC 42649, et al.). In summary:

- The City did not implement a commercial solid waste recycling program that is designed to divert commercial solid waste from businesses subject to PRC section 42649.2. Staff found a lack of recycling bins present at MCR businesses and multi-family complexes, and a lack of documentation to support other efforts as discussed within this analysis.

- The City did not provide supporting documentation that it had notified businesses and multi-family complexes of their noncompliance with the MCR law.
- The City's Annual Reports for 2012, 2013, and 2014, submitted on or before the August due date, were incomplete regarding implementation of the requirements of the MCR law. Follow-up inquiries by LAMD and JCU staff did result in some additional information, however, reporting was still incomplete and did not provide details to support that the City made all reasonable and feasible efforts to implement the following components of their program:
 - Identification
 - Monitoring
 - Education and Outreach

Options for Consideration

1. Find that the City is not complying with the MCR law as noted above and,
 - a. Approve the attached Compliance Order as written, or
 - b. Approve the attached Compliance Order with alternate or additional language or conditions.
2. Find that the City has achieved a Good Faith Effort and is adequately complying with the MCR law and not issue the attached Compliance Order.
3. Find that the City is in compliance with the MCR law and not issue the attached Compliance Order.

Staff Recommendation

Department staff recommends Option 1: Find that the City is not complying with the MCR law and approve the attached Compliance Order as written. This recommendation is based on the findings presented within this report which support that the City of Oakdale has not complied with, or made a good faith effort to comply with, the MCR law.

The proposed Compliance Order CO 017-004 (Attachment 5) includes the following conditions and implementation schedule:

- The City shall work with Department staff to determine the MCR gaps and develop a Local Implementation Plan (LIP) to improve, expand, or implement new MCR programs and/or efforts.
- The City shall develop and submit to the Department a fully executed LIP by January 31, 2018.
- The City will fully implement the programs and/or efforts in the LIP by June 30, 2018.
- A monitoring/"oversight" period from July 1, 2018 through December 31, 2018. The Department uses this time to ensure the City has continued implementation of the programs identified in the LIP.
- The City will submit quarterly status reports based on the calendar year. These status reports shall use the Department's electronic reporting format. The City will also attach any required documentation necessary to support their efforts to implement the LIP and Compliance Order.

The Compliance Order requires the Department to hold a public hearing following the term of the compliance schedule to determine whether the City has complied with all of the conditions of the Compliance Order.

The Compliance Order specifies that, at any time, any failure of the City of Oakdale to comply with any part of the Compliance Order may result in an earlier public hearing and fines of up to \$10,000 per day. Likewise, a public hearing could be scheduled earlier if the City complies with the Compliance Order ahead of schedule.

ATTACHMENTS

1. March 24, 2017, LAMD notified the City of Oakdale that an independent review of the City's commercial waste management program was necessary
2. March 30, 2017, City of Oakdale's Notice of 60-Day Conferring Period for Potential Compliance Enforcement
3. Photo Report for the City of Oakdale
4. November 8 2017, 30-Day Notice of Intent to Issue the City of Oakdale a Compliance Order for Failure to Adequately Implement and meet the Requirements of the Mandatory Commercial Recycling Law
5. Proposed Compliance Order CO 017-004
6. Request for Action for Consideration of the Issuance of Compliance Order CO 017-004 to the City of Oakdale

STAFF RESPONSIBLE FOR ITEM PREPARATION

Program Staff: Steve Rogers

Legal Staff: Tamar Dyson

Phone: (916) 341-6085

Phone: (916) 341-6083